

**REMARKS**

Claims 2-5, 7 and 10-14 are pending, and new claim 19 is presented for entry. Reconsideration and withdrawal of all rejections, in view of the provided amendments and the following remarks, is respectfully requested. Claims 6, 8, 9, 17 and 18 are cancelled without prejudice to further prosecution of these claims in a divisional, continuation or continuation-in-part patent application. The remaining claims are amended in order to more particularly point out that which Applicants consider to be their invention. The amended claims are urged to be fully supported by the application as filed, and by the previously pending claims.

At paragraph 4 of the Office Action, the Examiner has maintained a previous rejection of claims 17 and 18 as allegedly lacking an enabling disclosure. In the interest of expeditious prosecution, these claims are now cancelled, without prejudice, thus obviating this ground of rejection.

At paragraphs 5-7 of the Office Action, the Examiner has rejected claims 2-13, 17 and 18 as allegedly indefinite under 35 U.S.C. § 112, second paragraph. Claim 2 was rejected for depending from cancelled claim 1 and claim 9 was rejected for reciting an abbreviation. Claim 2 is now an independent claim, and claim 9 is cancelled, without prejudice, thus obviating this ground of rejection.

At paragraph 9 of the Office Action, the Examiner has rejected claims 6-10 under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement.

Applicants respectfully disagree. Claims 6, 8 and 9 are cancelled, without prejudice, in the interest of expeditious prosecution, thus obviating the rejections as to those claims. Claim 7 is directed to a DNA having a sequence that varies by a single codon, either suppressed, inserted, or substituted, that encodes a polypeptide having the biological properties of SEQ ID No.2. It is respectfully urged that the ordinary artisan, who has read Applicants' presumptively enabled specification, would readily understand the meaning of claim 7, and would be able to prepare and then routinely screen those polypeptides that fall within the scope of claim 7 by means of art-known methods. It is respectfully urged that the law requires nothing more in the way of support and enablement for claim 7.

Claim 10 is directed simply to the recombinant polypeptide of SEQ ID No.2, and no authority has been provided for application of this ground of rejection to claim 10. For all of these reasons, reconsideration and withdrawal of this ground of rejection, as to claims 7 and 10, is respectfully requested.

At paragraphs 10-11 of the Office Action, the Examiner has rejected claim 14 as allegedly not enabled under 35 U.S.C. § 112, first paragraph. Applicants urge that the claim is fully enabled by the above-captioned patent application and reserve the right to further traverse this rejection by presenting facts and reasons why the ordinary artisan would find that the named plasmid is fully enabled by the above-captioned patent application if necessary.

In the meantime, in the interests of expeditious prosecution, Applicants' appreciate the Examiner's invitation to submit a declaration confirming deposit of the subject plasmid under the Budapest Treating. This plasmid was deposited as an International Deposit with the Collection Nationale de Cultures de Microorganismes, Institut Pasteur, Paris, France as Accession No. I-2071. A Deposit Declaration attesting to the terms of the deposit, with attached deposit receipts, are attached hereto.

At paragraph 13 of the Office Action, the Examiner has rejected claims 2-4, 6-9, 17 and 18 as allegedly anticipated under 35 U.C.S., § 102(b) by Fujiwara *et al.* (EP 0704526A1) ("Fujiwara") (the Examiner's reference to Fujikawa *et al.* is believed to be an informality).

Applicants respectfully disagree. To begin, claims 6, 8, 9, 17 and 18 are cancelled, obviating the rejection as to those claims. In addition, as the Examiner will appreciate, in order to anticipate, a reference must disclose each and every element recited by a rejected claim. As stated by the Examiner on page 12 of the Office Action, "the sequence taught by Fujiwara *et al.* is 99.4% homologous to that of SEQ ID No: 2 and 4 in the absence of evidence to the contrary, the sequence taught by Fujiwara *et al.* would hybridize to SEQ ID Nos. 3 and 4." However, claim 6 is cancelled, obviating this ground of rejection. The differences in homology recited by the Examiner are therefore respectfully submitted to confirm that the DNA, as claimed, is not taught by Fujiwara *et al.*

Further, it is respectfully urged that the initial burden of maintaining a rejection under 35 U.S.C. 102(b) falls on the Examiner to point to facts negating novelty. It is respectfully urged that the Examiner has not shown any specific technical reasons why the invention, as stated by claims 2-5 and/or claim 7, falls within the scope of the DNA disclosed by the Fujiwara reference.

For all of these reasons, reconsideration and withdrawal of this rejection is respectfully requested.

At paragraph 14 of the Office Action, the Examiner has rejected claims 2-4 and 6-9 as allegedly anticipated under 35 U.C.S., § 102(b) by Arakawa *et al.* (Cytogenet. Cell Genet. 1995) ("Arakawa").

Applicants respectfully disagree. As noted above, claims 6, 8 and 9 are cancelled, thus obviating the rejection as to those claims. In order to anticipate, a reference must disclose each and every element recited by a rejected claim. As stated by the Examiner at page 13 of the Office Action, there is a 99.3% homology between the DNA disclosed by Arakawa and recited by the pending claims. The differences in homology recited by the Examiner are therefore respectfully submitted to confirm that the DNA, as claimed, is not taught by Arakawa.

As noted above, it is also respectfully urged that the initial burden of maintaining a rejection under 35 U.S.C. 102(b) falls on the Examiner to point to facts negating novelty. It is respectfully urged that the Examiner has not shown any specific technical reasons why the invention, as stated by claims 2-5 and/or claim 7, falls within the scope of the DNA disclosed by Fujiwara reference. For all of these reasons, reconsideration and withdrawal of this rejection is respectfully requested.

#### **EXTENSION OF TIME PETITION**

This response is being filed with a petition for a one month extension of time and authorization to charge the fee therefor to the undersigned's credit card. No further fees are believed to be required. If, on the other hand, it is determined that any further fees are due or any overpayment has been made, the Commissioner is hereby authorized to debit or credit such sum to deposit account 02-2275.

Pursuant to 37 C.F.R. 1.136(a)(3), please treat this and any concurrent or future reply in this application that requires a petition for an extension of time for its timely submission as incorporating a petition for extension of time for the appropriate length of time. The fee associated therewith is to be charged to Deposit Account No. 02-2275.

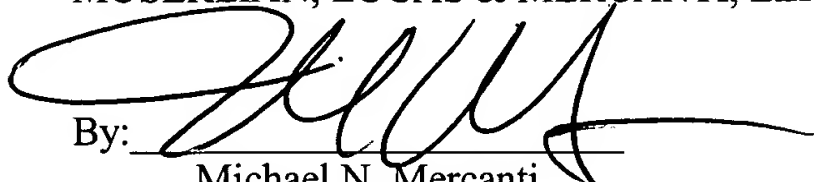
**CONCLUSION**

In view of the actions taken and arguments presented, it is respectfully submitted that the present application is now in condition for allowance.

An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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"Express Mail" mailing label No. EY 40 303 3180 U.S.  
Date of Deposit 05-20-04  
I hereby certify that the enclosed is  
being deposited with the United States Postal  
Service, 3700 Mail Plaza, "Addresssee"  
service fee of \$27 and 1.10 on the date indicated  
above and is addressed to the Commissioner for  
Patents, P.O. Box 1650, Alexandria, VA 22315-1450  
Margaret Rogers - May 20, 2004